

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.53/MP/2023 along with IA No. 11/2023**

- Subject : Petition under Section 79 of Electricity Act, 2003, including Sections 79(1)(b) and 79(1)(f) read with the provisions of Power Purchase Agreement dated 17.05.2021 executed between the Petitioners and the Respondent No. 1, Teest Urja Limited seeking setting aside of the letter dated 30.01.2023 issued by Respondent No. 1 purportedly under Clause 19.2 of the Power Purchase Agreement conveying its intention to terminate the aforesaid agreement and its consequential actions thereof( Interlocutory application seeking ex-parte & ad-interim stay on the impugned Letter dated 30.1.2023 bearing Reference No. TUL/PS&R/0001/2021-22/028.
- Date of Hearing : 30.5.2023
- Coram : Shri Jishnu Barua, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioners : Uttar Pradesh Power Corporation Limited (UPPCL) & Ors.
- Respondents : Teesta Urja Limited & Anr.
- Parties Present : Shri Sitiesh Mukherjee, Advocate, UPPCL  
Shri Sanjay Sen, Sr. Advocate, TUL  
Ms. Mandakini Ghose, Advocate, TUL  
Shri Tarun Johri, Advocate, TUL  
Shri Ankur Gupta, Advocate, TUL  
Shri Vidhan Vyas, Advocate, TUL

**Record of Proceedings**

During the course of the hearing, learned counsel for the Petitioner and the learned senior counsel for the Respondent No.1 made detailed submissions on the interim prayers made by the Petitioner in IA No. 11/2023.

2. Learned counsel for the Petitioner mainly submitted the following:

- (a) Termination Notice dated 30.1.2023 issued by the Respondent, Teesta Urja Limited (TUL) is not in accordance with the process mandated under the Hydro Power Purchase Agreement (HPPA). Article 19(2) of the HPPA contemplates a "Cure Period" of at least 120 days, and no notice of the Cure breach or default has been given to UPPCL by TUL.



(b) As to the averment of non-furnishing of the Letter of Credit (LC), Escrow Account, and Deed of Hypothecation, the Respondent, TUL vide its letter dated 4.11.2022 itself agreed to extend the timing for furnishing the Payment Security Mechanism (PSM), including the LC till 31.3.2023. Pertinently, the period of 180 days provided for furnishing the PSM in terms of the HPPA was mutually extended by the parties, and merely the expiry of such a period could not provide a basis of the termination, especially when TUL itself had extended it till 31.3.2023.

(c) In a meeting dated 22.8.2022, UPPCL indicated that all the comments of TUL with regard to the LC were acceptable to it except the demand for 'automatic' revolving LC. UPPCL had also stated that a Default Escrow Account with a revenue flow of Rs. 63 crore per month would be opened with ICICI Bank as the Default Escrow Bank. According to UPPCL's calculation, the 'Minimum Monthly Payment' under HPPA is Rs. 39.86 crore whereas the 'Maximum Monthly Payment' is Rs. 59.70 crore.

(d) The LC opened by UPPCL on 10.6.2022 for Rs. 39.86 crore in accordance with Article 13.2.2 of the HPPA is alive as on date. Amended HPPA requires a revolving LC not an 'automatically' revolving LC and in case of the conflict between the clauses of the HPPA and the Schedule (Schedule E- LC Format), the clauses of the HPPA would prevail. Article 13.3.2 of the HPPA mandates that the LC shall be '*substantially*' in the form as specified in Schedule E and the LC provided by UPPCL was in substantial compliance.

(e) As to the Escrow Account, TUL has been wrongly insisting that UPPCL should furnish 30% of its 'consolidated or global' monthly revenue into the Default Escrow Account. The said demand is based on the conflation of two separately defined terms, i.e. 'Default Escrow Bank' and 'Default Escrow Account'.

(f) The termination of HPPA by TUL due to the lack of the PSM is also contrary to the Ministry of Power's Order dated 28.6.2019 read with Procedure & Corrigendum dated 17.7.2019 and the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022.

(g) In the above circumstances, the letter dated 30.1.2023 issued by TUL conveying its intention to issue the Termination Notice in terms of the HPPA deserves to be stayed during the pendency of the main Petition. Pursuant to the interim-stay on the termination of the HPPA, the Petitioner is also willing to offtake power from the Respondent and for that purpose, it is willing to provide a month's charges in advance along with the LC (already in place as on today), Default Escrow Account and Deed of Hypothecation, in format as indicated by UPPCL.

(h) Despite being fully aware of the pending proceedings before the Commission and the prayers made by the Petitioner in IA, TUL by its letter dated 26.4.2023 has proceeded to issue the Termination Notice to terminate the HPPA, which clearly reflects on the conduct of the Respondent towards denying the interim reliefs as prayed for by the Petitioner.

3. Learned senior counsel for the Respondent No.1 mainly submitted as under:
- (a) Insistence on the PSM provided by the Respondent including its formats, has been as per the provisions of the HPPA. Pertinently, HPPA and provisions thereof formed part of the Standard Bidding Documents issued by the Ministry of Power, Government of India, under Section 63 of the Electricity Act, 2003 ('the Act').
- (b) As per the original HPPA, the establishment of a Default Escrow Account and Deed of Hypothecation by the Procurer was a condition precedent under Article 4.1.2 (a) & (b). However, considering the difficulties of UPPCL, such clauses were deleted in the Supplementary HPPA dated 8.10.2021 (SHPPA) executed between the Petitioner and the Respondent. As per Article 13 of SHPPA, the UPPCL was required to provide the Default Escrow within 180 days of the Appointed Date (20.10.2021) i.e. on or before 19.4.2022.
- (c) As per Article 13.2.1 of the HPPA, UPPCL was required to provide unconditional, revolving and irrevocable LC 30 days prior to the Appointed Date. The 'manual revolving' LC as contended by the Petitioner is misnomer as such LC would require an intervention for its re-instatement as against the 'automatic'. UPPCL has itself given the LC without requiring such 'manual revolving' to the Respondent in respect of the arrangement of the supply of power between the parties under Section 62 of the Act.
- (d) On numerous occasions, UPPCL was requested to provide the PSM as per the provisions of the HPPA. In response, UPPCL has consistently indicated that it cannot provide the PSM as per the HPPA. Prior to the supply period for year 2022 (i.e. from 1<sup>st</sup> May, 2022) also, the Respondent vide its letter dated 31.3.2022 had requested the UPPCL to provide the PSM as per the HPPA, but it did not do so.
- (e) Payment against the invoice raised by the Respondent for the month of October, 2021 for the supply during the period from 20.10.2021 to 31.10.2021, was also released by UPPCL in tranches till 3.2.2022 and the Late Payment Surcharge (LPS) to the tune of Rs. 37.22 lakh was not paid by it. The Respondent was required to adjust the dues against the advance payment of Rs. 1 crore paid by the Petitioner under the MoP Orders.
- (f) Vide Record of Proceedings for the hearing dated 14.2.2023, the Commission, after considering the submissions made by the learned counsel for the Petitioner, had permitted the UPPCL to file an additional affidavit indicating its readiness to provide the PSM as per the provisions of HPPA along with draft documents. In the affidavit dated 14.3.2023 filed by UPPCL in compliance thereof, it has been categorically stated that "*as on date UPPCL, owing to severe financial constraints is not in a position to open Default Escrow Account.*" Following this, the Respondent was constrained to issue the termination notice dated 26.4.2023.

(g) The Petitioner has not even prayed for resumption of the supply in terms of the HPPA and has only prayed for stay on the letter issued by the Respondent dated 30.1.2023. In any case, the Petitioner has failed to make out any case for stay on the termination of the HPPA or any other interim relief.

4. After hearing the learned counsel for the Petitioner and the learned senior counsel for the Respondent No.1 and keeping in view that the disagreements between the parties pertaining to the exact form of the LC and Default Escrow Account, the Commission deemed it appropriate to direct the parties to convene a meeting and attempt to resolve such differences to arrive at a mutually agreed form of such PSM documents. The Commission further directed the parties to file their respective affidavits after such meetings along with minutes thereof. on or before 6.6.2023.

5. The matter shall be listed for hearing on 8.6.2023.

**By order of the Commission**

**Sd/-  
(T.D. Pant)  
Joint Chief (Law)**